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Docket No. BIO-76

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Shlomo Ben-Haim et al. Confirmation No.: 1397
Appln. No. : 09/379,540
Filed : August 24, 1999
Title : INTRACARDIAC CELL DELIVERY AND CELL
TRANSPLANTATION

Art Unit : 3763
Examiner : Roz Maiorino

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Louis J. Capezzuto

(Name of applicant, assignee, or Registered Representative)

(Signature)

April 9, 2004

(Date of Signature)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR § 1.193 (b) (1)

Dear Sirs:

In response to the Examiner's Answer dated February 24, 2004, the Applicant respectfully responds as follows:

REMARKS

The Applicant would like to take the opportunity to reply to two specific paragraphs (No. 6 and No. 11) raised in the Examiner's Answer.

Examiner's Answer Paragraph No. 6:

Another Terminal Disclaimer (new) was submitted to the Patent Office on March 9, 2004 disclaiming the terminal part of any patent granted on the instant application which would extend beyond the expiration date of Applicant's prior U.S. Patent No. 6,309,370 B1 in accordance with 37 CFR § 1.321 and MPEP § 1490. A copy of this new Terminal Disclaimer (including postcard, fee transmittal form and Assignment Recordation documents) is enclosed herewith. Accordingly, this issue should be deemed to have been properly resolved and rendered moot.

Examiner's Answer Paragraph No. 11:

The Examiner's statement of the rejection of "claims 1-40 based upon US Patent No. 6309370 to Ben-Haim in view of US Patent No. 6283951 Flaherty et al as set forth in the last Office Action..." is believed to be in error. The Applicant believes that the Examiner has made a mistake with respect to identifying U.S. Patent No. 6,309,370 (Ben-Haim) as part of the basis for the original rejection in the last Office Action, since this patent was not referenced in any rejection combining it with U.S. Patent No. 6,283,951 (Flaherty et al.). The Applicant believes that the Examiner intended to identify Applicant's other U.S. Patent No. 6,321,109 (Ben-Haim et al.).

If the identity of U.S. Patent No. 6,309,370 in this rejection has not been in error, then it is the Applicant's position that this would constitute a new ground of rejection that is clearly prohibited under MPEP § 1208.01.

Accordingly, acknowledgment of receipt and entry of the Reply Brief is respectfully requested so that Applicant's Appeal can be addressed on the merits.

Serial No. 09/379,540

Respectfully submitted,

By: 

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